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Attachment 4.34-A  
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OMB NO.:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: OKLAHOMA

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

In Oklahoma, the law regarding advance directives is contained in the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, 63 Oklahoma Statutes § 3101 et seq. (Supp. 1992).

Under the law, an individual of sound mind and 18 years old or older may execute at any time an advance directive governing the withholding or withdrawal of life sustaining treatment. The requirements are as follows:

1. The patient must 18 years old or older and of sound mind;
2. The patient must be in "terminally ill" or "persistently unconscious" condition (definitions Okla. Stat. 63 § 3101.3);
3. The document must be signed by the declarant and two witnesses.
  - (a) witnesses must be 18 years or older,
  - (b) cannot be legatees, devisees or heirs at law.

An advance directive may be revoked in whole or in part at any time and in any manner by the declarant, without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation. (Okla. Stat. 63 § 3101.6)

An advance directive becomes operative when:

1. It is communicated to the attending physician, and
2. Declarant is no longer able to make decisions regarding administration of life-sustaining treatment (Okla. Stat. 63 § 3101.5)

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: OKLAHOMA

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE (cont'd)

The determination of the attending physician and another physician that patient is a qualified patient shall become a part of the patient's medical record. (Okla. Stat. 63 § 3101.7)

Examples of the advance directives are located in Okla. Stat. 63 § 3101.4.

The original or photocopy of the advance directive shall be part of the declarant's medical record, and if physician or health care provider is unwilling to comply, promptly so advise the declarant.

An advance directive shall be in form according to Sec. 3101.4. It shall designate health care provider/physician, health care proxy, conflicting provision, and other provision. Example in Sec. 3101.4.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: NEW MEXICO

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REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS  
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State of New Mexico concerning advance directives. The state statutes are silent on the question of whether a health care provider may object, on the basis of conscience, to the implementation of advance directives.

A. Living will

New Mexico Statutory Act 24-7-1 through 24-7-11 is cited as the "Right to Die Act" and defines a living will as a document, executed by an individual of sound mind and having reached the age of majority, directing that if he is ever certified as suffering from a terminal illness or being in an irreversible coma, maintenance medical treatment shall not be utilized for the prolongation of his life.

The same statute discusses a variety of limitations of living will declaration. They are valid documents only if executed in the same process as a valid will under provisions of the Probate Code. Certification of terminal illness or irreversible coma must be done in writing by two physicians presumed to be acting in good faith. Revocation of the living will can be accomplished by destroying the document or by contrary indication expressed to any one witness over the age of majority.

The statute also defines proxy designation for the benefit of minors who are terminally ill or in irreversible coma. Substituted consent may also be given by all family members who can be contacted through reasonable diligence and who choose to forego treatment for their member.

Attachment 4.34-A (1) contains the "New Mexico Living Will and Declaration Under the Right to Die Act".

B. Durable Power of Attorney

New Mexico Statutory Act 45-5-501 through 45-5-502 defines durable power of attorney as a written document in which a principal designates another person as his attorney-in-fact or agent by a power of attorney containing the words, "This power of attorney shall not be affected by the incapacity of the principal",

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